IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1620 OF 2007

IN

ADMIRALTY SUIT NO.9 OF 2007

State Bank of India .. Plaintiffs

Versus

Pranik Shipping & Service Ltd. & Ors. .. Defendants.

Mr.A.B.Ketkar with Mr.D.G.Dhanure i/b.M.V.Kini & Co. for plaintiffs.

Ms.S.Priya for defendant Nos.1 to 3.

Mr.P.S.Pratap i/b.Mr.M.R.Khatri for defendant No.4.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th September, 2007.

P.C.:

1. This notice of motion prays for the following reliefs.

a) This Hon'ble Court be pleased to direct the Sheriff of Mumbai to have the third Defendant Vessel, m.v.PRANIK PRAVESH appraised by any of the

approved appraiser according to the true value thereof and upon such value having been certified in writing by the said appraiser, to sell the third Defendant Vessel by public auction free and clear of all existing liens, for the highest price that can be obtained for her;

b) That the Sheriff of Mumbai be directed to require the buyer of the third Defendant Vessel, m.v.PRANIK PRAVESH at the auction or pay the purchase price by means of a Banker’s Draft in favour of Sheriff of Mumbai, 15% of the amount of his bid in Indian Rupees within 96 hours of the sale and the balance of the purchase price within 14 days of the sale;

c) That the Sheriff of Mumbai be directed to fix a date for sale by Public Auction of the third Defendant Vessel, m.v.PRANIK PRAVESH;

d) That the Sheriff of Mumbai be directed to give Public Notice of sale by advertisement in Public Notice column of two newspapers, one in English and another in Vernacular language printed and published from Mumbai, prior to the date fixed

for the sale."

2. The State Bank of India has filed this notice of motion and in the affidavit in support it sets out the circumstances in which the suit was instituted by the State Bank of India for recovery of the mortgaged debt amounting to Rs.9,89,72,235.06.

3. It is not in dispute that the vessel was arrested by an order passed by this court on 26th February, 2007 and continues to remain under arrest even today.

4. The 3rd defendant vessel is in custody. It is presently at Goga Dry Dock at Bhavnagar. The 4th defendant is a ship builder and ship repairer. The vessel is detained by the 4th defendant because repair charges and other bills are also outstanding.

5. In the affidavit in support in paragraph 4, it is pointed out that if the vessel is not disposed of expeditiously it is likely to be deteriorate further. Presently, the vessel is lying at the Dry Dock. Even the repairs could not be carried out completely because of the fact that the maintenance cost and other charges have not been paid.

6. Request as made by the plaintiffs State Bank of India is opposed by the original defendant Nos.1 to 3.

7. Ms.Priya appearing for defendant Nos.1 to 3 contends that the defendant Nos.1 to 3 were ready and willing to settle the matter amicably in terms of the circular of the Reserve Bank of India / State Bank of India on the subject of one time settlement. She invites my attention to the detailed correspondence, copies of which are annexed to the affidavit in reply and submits that even today the defendant Nos.1 to 3 are ready and willing to abide by their proposal to pay a sum of Rs.3.50 crores but with instalments and in some reasonable time. However, from 2003, the Bank has been postponing the decision on the one time settlement on one or more grounds and finally has called upon the defendant Nos.1 to 3 to pay the sum as demanded within 24 hours from the receipt of the letter, failing which the Bank has threatened that it would take steps to dispose of the vessel. She has invited my attention to the affidavit in reply and the correspondence, culminating in the Bank’s letter of 5th May, 2006. She submits that the Bank has not at all acted reasonably but arbitrarily and without giving sufficient and proper opportunity, has turned down a reasonable

offer. She has invited my attention to the Advocate's letters, copies of which are also annexed to the affidavit in reply.

8. This matter was placed before me yesterday and I had told Ms.Priya to take instructions from the defendant Nos.1 to 3 and make a statement as to whether these defendants are ready and willing to deposit a sum of Rs.1.50 crores in Court. She has reported today that she has no instructions to make such a statement. She states that the defendant Nos.1 to 3 would not be in a position to deposit such a huge amount.

9. I could have considered the offer for settlement provided the defendant Nos.1 to 3 had shown their bonafides and brought a substantial sum in Court. It is not as if that they are not aware of the pendency of the litigation. It is not as if that they were not aware that the proposals for one time settlement were exchanged between parties right from 2003 and until the Advocate's letter despatched in December, 2006. For all these years, no steps have been taken by the defendant Nos.1 to 3 to challenge the decision of the Bank if they were so aggrieved by the same.

10. It is in these circumstances, that I am unable to accept the request of the defendant Nos.1 to 3 to adjourn the hearing.

11. Having perused the notice of motion and the affidavit in support so also considering the fact that public funds are at stake and even the ship breaker and ship repairer has not been paid off all these years, it would not be just and proper to postpone the sale any longer. The sale is in the interest of all secured creditors. The present state of the Vessel would only mean that its value diminishes day to day. In such circumstances, it is expedient and in the interest of all secured creditors that the sale of the vessel goes through.

12. Mr.Pratap appearing for defendant No.4 submits that there is a possessory lien of defendant No.4 on the 3rd defendant vessel and the claim of defendant No.4 will have to be protected. He does not object to the sale but submits that the sale proceeds cannot be disbursed straightaway unless the priorities are determined in accordance with law. He submits that the defendant No.4 is ready and willing to handover the possession of the vessel to the Sheriff to enable him to implement the

orders passed by this Court.

13. In such circumstances, without prejudice to the rights and contentions of the defendant No.4 with regard to their claim and the share in the sale proceeds so also priority therein, it is directed that the subject vessel be sold by the Sheriff of Mumbai. Accordingly, notice of motion is made absolute in terms of prayer clauses (a) to (d). No order as to costs.

14. All concerned to act upon an authenticated copy of this order.

15. Mr.Pratap states that this Court should specify that the possessory lien of defendant No.4 is protected. I see no apprehension after the above clarification is issued. In any event, the sale would not in any manner prejudice the possessory lien of defendant No.4. Its claim is protected accordingly.

16. Needless to state that after the sale concludes and the sale proceeds brought in Court, liberty to the plaintiffs and defendant No.4 to apply. Needless to state that as the Court has directed that the vessel be sold, thereafter, it will be for the Court to confirm the sale.

All contentions even in that behalf are also kept open.

17. Notice of motion is accordingly disposed of in the above terms.

(S.C.Dharmadhikari, J.)